

Affordable Insurance Exchanges: Choices, Competition and Clout for States

On July 11, 2011, the U.S. Department of Health and Human Services (HHS) published two Notices of Proposed Rulemaking (NPRM). The first proposed rule, the Exchange NPRM, outlines a framework that will enable States to build Affordable Insurance Exchanges, new State-based competitive marketplaces created under the Affordable Care Act. The second NPRM addresses standards related to reinsurance, risk corridors, and risk adjustment to assure stability in these newly established markets.

These proposed rules are a major step forward in implementing the Exchanges.

Starting in 2014, individuals and small businesses will have the same affordable insurance choices as Members of Congress and will be able to purchase private health insurance through the Exchanges. Exchanges will make it easy for individual consumers and small businesses to compare health plans, get answers to questions, and enroll in or offer to their employees a health insurance plan that meets their needs. Individuals will be able to find out if they are eligible for advance payments of premium tax credits and cost sharing reductions or health programs like the Children's Health Insurance Program (CHIP); small businesses will be eligible for a tax credit for coverage purchased for employees through the Exchange.

Exchanges offer Americans competition, choice, and clout. Insurance companies will compete for business on a level and transparent playing field, driving down costs. Exchanges will have the same purchasing clout as big businesses and will give consumers a choice of plans to fit their needs.

The draft proposal released today offers a framework to assist States in setting up Affordable Insurance Exchanges and gives States significant flexibility to build an Exchange that works for them. For example, the draft proposal allows States to decide whether their Exchange should be local, regional, or operated by a non-profit organization, how to select plans to participate, and whether to partner with HHS to split up the work.

The draft proposal builds on over a year's worth of work with States, small businesses, consumers and health insurance plans. In drafting these proposals, the Administration examined models of Exchanges, held numerous meetings with stakeholders and consulted closely with State leaders, consumer advocates, employers and insurers.

The main topics of the proposed Exchange NPRM include standards for:

- States that elect to establish and operate an Exchange;
- Health insurance plans to participate in an Exchange;
- Enrollment in health plans through Exchanges; and
- Employers who opt to participate in the Small Business Health Options Program (SHOP).

This proposed rule is the latest in an ongoing series of steps to help States develop Exchanges. Already, 49 States, the District of Columbia, and four territories have received Exchange Planning grants and to date, over half of States have taken additional action to establish Exchanges.

Public Comment

HHS is accepting public comment on the proposed rules over the next 75 days to learn from States, consumers, and other stakeholders how the rules can be improved. HHS will modify these proposals based on feedback from the American people. To facilitate that public comment process, HHS will convene a series of regional listening sessions and meetings.

Establishment of Exchanges

The proposed Exchange rule prioritizes State flexibility in numerous ways. For example, each State can structure its Exchange in its own way: as a non-profit entity established by the State, as an independent public agency, or as part of an existing State agency. In addition, a State can choose to operate its Exchange in partnership with other States through a regional Exchange or it can operate subsidiary Exchanges that cover areas within the State. Any combination of these options can be approved. Exchanges that are run by independent agencies or non-profits must have governance principles that ensure freedom from conflicts of interest and promotion of ethical and financial disclosure standards.

Exchanges will perform a variety of functions, including:

- Certify health plans as Qualified Health Plans (QHPs) to be offered in the Exchange.
- Operate a website to facilitate comparisons among qualified health plans for consumers.
- Operate a toll-free hotline for consumer support, provide grant funding to entities for consumer assistance, called “Navigators”, and conduct outreach and education to consumers regarding Exchanges.
- Facilitate enrollment of consumers in Exchange-qualified health plans.

States have substantial flexibility in determining how to perform these functions.

Exchange plans must be approved by HHS no later than January 1, 2013. The proposed rule allows for conditional approval if the State is advanced in its preparation but cannot demonstrate complete readiness by the January 1, 2013 date. The proposed rule also allows States that are not ready for 2014 to apply to operate the Exchange for 2015 or any subsequent year. HHS will continue working with States to support their progress.

Qualified Health Plans

Affordable Insurance Exchanges will offer health plans that provide high quality, coverage like that of a typical employer plan. Health plans offered through the Exchange must be certified as Qualified Health Plans (QHPs). To be certified, health plans must meet minimum standards proposed in this proposed rule but primarily set out in the law. The proposed rule gives States considerable flexibility in establishing standards for health plans offered in their Exchanges. For example, Exchanges have flexibility on the:

- **Number and Type of Health Plan Choices:** The proposed rule allows Exchanges to work with local health insurers on structuring qualified health plan choices that are in the best interest of their enrollees. This could mean that any health plan that meets the standards can participate, that health plan issuers with successful competitive bids can participate, or anywhere in between. It also gives Exchanges flexibility on accreditation deadlines, allowing new and innovative health plans to sell through the Exchange as they gain accreditation.
- **Standards for Health Plans:** The proposed rule allows Exchanges, working with State insurance departments, to set the standards to ensure that consumers have a choice of health care providers within each qualified health plan rather than proposing a national standard. As

with network adequacy standards, marketing standards would be set by States and Exchanges in the proposed rule. This allows health plans to align their Exchange marketing with other commercial practices in a State.

- **Stabilizing Premiums for Health Plans:** The Affordable Care Act established three risk-mitigation programs to offset market uncertainty and risk selection to maintain the viability of Exchanges: temporary reinsurance and risk corridor programs, and a permanent risk adjustment program. These programs stabilize the insurance market as reforms take effect, and equitably spread the financial risk across plans for high-cost enrollees. The proposed rule on premium stabilization offers States options in designing and administering these programs. States have the flexibility to operate the reinsurance program even if they do not establish an Exchange and can modify the payment rules to tailor them to their States. States can also tailor the risk adjustment program, for example, using their own methodology if approved by HHS and determine when and how payments to plans get made.

Enrollment

Exchanges will use a streamlined, simple enrollment system to ensure that eligible Americans successfully enroll in the health that they decide best fits their needs. The enrollment process will be geared toward consumers, using websites, toll-free call centers and in-person offices to help people enroll in coverage. Exchanges will enable consumers to learn about the varieties of coverage provided in the market so that they can make informed choices about the coverage available on the Exchange. State Exchanges have options to improve the performance of this system through how they design their website and whether they use the single application that will be made available or design one on their own that is comparable. State Exchanges will design a plan to ensure participants' information is safe and secure.

Exchanges will also build partnerships with and award grants to entities known as "Navigators" who will reach out to employers and employees, consumers, and self-employed individuals to:

- Conduct public education activities to raise awareness about qualified health plans.
- Distribute fair and impartial information about enrollment in qualified health plans, premium tax credits, and cost-sharing reductions.
- Assist consumers in selecting qualified health plans.
- Provide referrals to an applicable consumer assistance program or ombudsman in the case of grievances, complaints, or questions regarding health plans or coverage.
- Provide information in a manner that is culturally and linguistically appropriate.

States that operate an Exchange will award grants to Navigators. The proposed rule has States choosing at least two from the list of potential Navigator organizations and deciding how to fund and design the program.

Small Business Health Options Program (SHOP)

Beginning in 2014, Exchanges will operate a Small Business Health Options Program (SHOP), a program that offers small employers and their employees new choices. Through the SHOP, employers can choose the level of coverage they will offer (bronze, silver, gold or platinum plans), define their contribution toward their employees' coverage, and then offer the employees choices of multiple insurers and plans. Employees choose among the plans that fit their needs and their budget. Employers can offer coverage from multiple insurers, just like larger companies and government employee plans, but get a single bill and write a single check.

States and their Exchanges will shape how SHOP is structured. Specifically, they have flexibility with regard to:

- **Size of small businesses that can participate in SHOP:** States can set the size of the small group market up to 50 employees instead of 100 employees until 2016. And, starting in 2017, States may let businesses with more than 100 employees buy large group coverage through the SHOP.
- **Structure of choices for small businesses:** Exchanges can choose to offer employers additional ways to provide coverage, including allowing their employees to choose any plan in all tiers of coverage or a traditional “employer choice” offer of a single plan.

Starting in 2014, small employers purchasing coverage through SHOP may be eligible for a tax credit of up to 50% of their premium payments if they have 25 or fewer employees, pay employees an average annual wage of less than \$50,000, offer all full time employees coverage, and pay at least 50% of the premium. Employees offered affordable and minimum value health insurance by their employer are not eligible for advance payments of tax credits to reduce premiums for coverage purchased through the individual Exchange.

Partnering with States to Support Exchange Development

To reduce duplication of effort and the administrative burden on the States, HHS also announced that the Federal government will partner with States to make Exchange development and operations more efficient. States can choose to develop an Exchange in partnership with the Federal government or develop these systems themselves. This provides States more flexibility to focus their resources on designing the right Exchange for local insurance markets.

Posted on: July 11, 2011